

2001 JUDGE ADVOCATE OFFICER ADVANCED COURSE

CHAPTER 13

NONJUDICIAL PUNISHMENT

Table of Contents

I.	INTRODUCTION.....	1
II.	AUTHORITY TO IMPOSE ARTICLE 15s.	1
III.	OFFENSE.....	3
IV.	TYPES OF ARTICLE 15s.....	3
V.	NOTICE REQUIREMENT. SOLDIER MUST BE NOTIFIED OF THE FOLLOWING:.....	4
VI.	HEARING.....	6
VII.	PUNISHMENTS.....	7
VIII.	FILING OF ARTICLE 15s.	8
IX.	APPEALS.....	9
X.	PUBLICIZING ARTICLE 15s.	12
XI.	ADMINISTRATIVE CONSEQUENCES OF AN ARTICLE 15.....	12
XII.	CONCLUSION.....	12

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2001 JUDGE ADVOCATE OFFICER ADVANCED COURSE

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Outline of Instruction

I. INTRODUCTION.

II. AUTHORITY TO IMPOSE ARTICLE 15s.

A. Who May Impose?

Commanders must be in a title 10 status (AD, ADT, AT, IDT, AGR) when offering or imposing punishment or vacating suspended punishment UP Article 15.

1. **Enlisted soldiers:** either AC or RC commanders may punish RC enlisted soldiers of their commands. AR 27-10, para. 21-6c.
2. **Officers:** either the AC or RC GCMCA or commanding general in the RC officer's chain of command may punish officers. AR 27-10, para. 21-6d.
3. **AGR:** RC commanders cannot impose nonjudicial punishment on AGR soldiers while on IDT. AR 135-18, para. 2-10a.1.

B. Can Article 15 Authority Be Delegated?

1. Article 15 authority may not be delegated.

2. Exception: General court-martial convening authorities and commanding generals can delegate Article 15 authority to any deputy or assistant commander or to chief of staff if the chief of staff is a general officer. Delegation must be written.

C. Can Article 15 Authority Be Limited? Yes.

1. Permissible limitations.

- a. Superior commander may totally withhold.
- b. Superior commander may partially withhold (e.g., over categories of personnel, offenses, or individual cases).
- c. Withhold in individual case.
- d. No requirement that limitations be written but probably a good idea (e.g., publish in post regulation).

2. Impermissible limitations.

- a. Superior commander cannot direct a subordinate commander to impose an Article 15.
- b. Superior commander cannot issue regulations, orders, or guides that either directly or indirectly suggest to subordinate commanders that—
 - (1) Certain categories of offenders or offenses be disposed of under Article 15.
 - (2) Predetermined kinds or amounts of punishment be imposed for certain categories of offenders or offenses.

III. OFFENSE

- A. When is an Article 15 Appropriate?
 - 1. Minor offenses.
 - 2. Correct, educate, reform offenders.
 - 3. Preserve a soldier's record of service from unnecessary stigma.
 - 4. Further military efficiency.
- B. Double Jeopardy Issues.
 - 1. Prior trial by civilians. Ordinarily will not be tried as matter of policy. AR 27-10, para. 4-2.
 - 2. Subsequent court-martial. Only if serious offense. United States v. Pierce, 27 M.J. 367 (C.M.A. 1989). Must give complete credit for punishment served and government cannot use Article 15 for any purpose (including impeachment and aggravation evidence).
 - 3. Previous Article 15. Cannot administer another Article 15 for same misconduct. AR 27-10, para. 3-10.
- C. RC soldiers must be in title 10 status to receive nonjudicial punishment.

IV. TYPES OF ARTICLE 15s.

- A. Formal Article 15.

1. Appropriate if soldier is an officer
- or
2. Punishment (for any soldier) might exceed 14 days extra duty, 14 days restriction, oral admonition or reprimand, or any combination thereof.
3. Recorded on DA Form 2627.

B. Summarized Article 15.

1. Appropriate where soldier is enlisted and punishment should not exceed 14 days extra duty, 14 days restriction, oral admonition or reprimand, or any combination thereof.
2. Recorded on DA Form 2627-1.

V. NOTICE REQUIREMENT. SOLDIER MUST BE NOTIFIED OF THE FOLLOWING:

- A. Commander's Intention to Dispose of the Matter under Article 15.
- B. Maximum Punishment Which the Commander Could Impose under Article 15.
- C. Offense Believed to be Committed.
- D. Notice includes Soldier's Rights Under Article 15.
 1. Formal.
 - a. A copy of DA Form 2627 with items 1 and 2 completed so defense counsel may review and properly advise soldier.

- b. Remain silent.
- c. Consult with counsel (usually 48 hours).
- d. Demand trial by court-martial (unless attached to or embarked in a vessel).
- e. Request an open hearing.
- f. Request a spokesperson.
- g. Examine available evidence.
- h. Present evidence and call witnesses.
- i. Appeal.

2. Summarized.

- a. Reasonable decision period (normally 24 hours).
- b. Demand trial by court-martial.
- c. Remain silent.
- d. Hearing.
- e. Present evidence and call witnesses.
- f. Confront witnesses.
- g. Appeal.

- E. Delegating the Notice Responsibility.
 - 1. Commander may delegate the notice responsibility to any subordinate who is a SFC or above (if senior to soldier being notified).
 - 2. Good way to involve first sergeant or command sergeant major?
- F. How to Give Notice. See Script, AR 27-10, Appendix B.

VI. HEARING.

- A. In the Commander's Presence.
- B. "Open" v. "Closed" Hearing.
- C. Witnesses.
- D. Spokesperson.
- E. Right to consult with counsel.
 - 1. AGRs or RC personnel on extended active duty will be represented by USATDS.
 - 2. RC commander contacts RC SJA who determines availability of RC defense counsel, either from a court martial defense team or other qualified RC JA.
 - 3. If no RC defense counsel is available, RC SJA should coordinate with AC Trial Defense Service (TDS) personnel.

4. Commanders should be flexible in allowing RC soldiers more time to consult with counsel.

F. Rules of Evidence.

1. Commander is not bound by the formal rules of evidence, except those pertaining to privileges.
2. May consider any matter the commander believes relevant (including, e.g. unsworn statements and hearsay).

G. Decision on Guilt or Innocence.

Proof beyond a reasonable doubt required.

VII. PUNISHMENTS.

A. Maximum Punishment. See Table 3-1, AR 27-10.

B. Four Types of Punishment.

1. Reduction in grade. **RC AGR** soldiers in grade of E6 **cannot** be reduced. AR 140-158, para. 4-2a(3), 7-9a.
2. Loss of liberty punishments.
 - a. Correctional custody.
 - b. Extra duty.
 - c. Restriction.
3. Forfeiture of pay.

- a. Forfeitures are based on grade to which reduced, whether or not reduction is suspended.
 - b. Reconciliation log, DA Form 5110-R, may be used to monitor pay forfeitures.
 - c. Forfeitures can be applied against retirement pay.
 - d. Reserve pay: Impose forfeitures using whole dollar amounts based on active duty soldier's pay. See Appendix A to this outline.
- 4. Admonition and reprimand.
- C. Combination of Punishments.
- D. Punishment can be carried over from one period of title 10 duty to subsequent periods. IDT cannot be scheduled solely for the purpose of having the soldier serve NJP. RC soldiers cannot be held beyond the end of a normal period of IDT to serve NJP.

VIII. FILING OF ARTICLE 15s.

- A. Formal Article 15s.
 - 1. E4 and below.
 - a. Original DA Form 2627 filed locally in unit nonjudicial punishment files. Copies two and three to the MILPO that services the MPRJ if the punishment includes an unsuspended reduction and/or forfeiture of pay.
 - b. Destroyed two years after imposition or upon transfer to another general court-martial convening authority if transfer for non-medical reason.

2. All other soldiers.
 - a. Performance fiche or restricted fiche of OMPF.
 - b. Imposing commander's determination is final unless soldier has an Article 15, received while he was a sergeant (E5) or above, filed in his restricted fiche - bumps all subsequent 15s to performance fiche.
 - c. Superior commander cannot withhold subordinate commander's filing determination or change filing decision on appeal.
- B. Summarized Article 15s.
 1. DA Form 2627-1 filed locally.
 2. Destroyed two years after imposition or upon transfer from the unit.

IX. APPEALS.

- A. Soldier only has one right to appeal under Article 15.
- B. Time Limits to appeal.
 1. Reasonable time.
 2. After 5 days, appeal presumed untimely and may be rejected.
- C. Who Acts on an Appeal?

1. Next superior commander.
2. Any superior commander, senior to the appellate authority, may act on an appeal.
3. Successor in command or imposing commander can take action on appeal.
4. Appellate authority has 5 calendar days to act on formal article 15 appeal; 3 days to act on summarized article 15 appeal.
5. RC commanders can act on an appeal at any time unless vacating a suspension.

D. Procedure for Submitting Appeal.

1. Indicate on DA Form 2627, item 7 or DA Form 2627-1, item 4.
2. Submitted through imposing commander.

E. Action by Appellate Authority

1. May conduct independent inquiry.
2. Must refer certain appeals to the SJA office for a legal review before taking appellate action. See note 9, back of DA Form 2627.
3. May refer an Article 15 for legal review in any case, regardless of punishment imposed.
4. May take appellate action even if soldier does not appeal.

F. Commander's options on appeal.

1. Approve punishment.
2. Suspend (consider vacation if subsequent misconduct or violation of a condition imposed by the commander).
3. Mitigate- reduce quality or quantity of punishment.
4. Remit- cancel unexecuted portion of the punishment.
5. Set Aside- restore all rights, privileges, and property based on a "clear injustice."

Use DA Form 2627-2, if relief granted on appeal after distribution of DA Form 2627 (including copies).

G. Petition to the Department of the Army Suitability Evaluation Board (DASEB).

1. Sergeants and above may petition to have DA Form 2627 transferred from the performance to the restricted fiche.
2. Soldier must present evidence that the Article 15 has served its purpose and transfer would be in the best interest of the Army.
3. Petition normally not considered until at least one year after imposition of punishment.

X. PUBLICIZING ARTICLE 15s.

XI. ADMINISTRATIVE CONSEQUENCES OF AN ARTICLE 15.

A. Formal Article 15 - DA Form 2627.

1. Admissible at trial by court-martial.
2. May be reported to National Criminal Information Center (NCIC).
3. May be considered in administrative proceedings.
4. Not an automatic bar to reenlistment.

B. Summarized Article 15- DA Form 2627-1.

1. Not admissible at trial by court-martial.
2. May be considered in administrative proceedings.
3. Not an automatic bar to reenlistment.

XII. CONCLUSION.

APPENDIX A

EXAMPLE (Calculating Forfeitures for RC Soldiers)

PROBLEM: Field Grade Commander wants to impose forfeitures of \$350 per month for 2 months on Specialist (E4) with 2 years time in service.

SOLUTION:

1. Determine amount of base pay for AC soldier of same grade and time in service. (\$1176.30)
2. Convert amount forfeited to a percentage: $(350/1176.30 = 30\%)$.
3. Collect that percent of the soldier's pay for each period of duty performed. (30% of pay for each unit training assembly)
4. Pay may only be collected for duty performed during the stated period of forfeitures (2 months). If the forfeitures have not been satisfied by then, no further collection is authorized.

